

Statement of the Attorney General for the District of Columbia

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Before the

**Committee on the Judiciary
Phil Mendelson, Chairperson**

**Public Oversight Hearing
Fiscal Year 2004 and Fiscal Year 2005 Spending and Performance by
The Office of the Attorney General**



**Office of the Attorney General
District of Columbia**

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**Council Chamber
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, D.C.**

Good afternoon, Chairperson Mendelson, members of the Committee on the Judiciary, members of the Council of the District of Columbia, and guests. I am Robert J. Spagnoletti, Attorney General for the District of Columbia and I am pleased to appear before you this afternoon to discuss the performance of the Office of the Attorney General during Fiscal Year 2004 and thus far in Fiscal Year 2005.

Introduction

For 102 years, my Office was known as the Office of the Corporation Counsel because it provides legal services to the District of Columbia which is, like most cities, a municipal corporation. When I appeared before the Committee on the Judiciary at this time last year, I appeared as the Corporation Counsel.

I am pleased to report that during the past 18 months, the Office experienced a significant transformation in structure, in management, and in name. This transformation recognizes that the District government employs some of the most talented and highly dedicated attorneys in the District of Columbia. It acknowledges that although the District is not a state in name, we are indeed a state in how we function. As a result of this transformation, and in recognition of the state-like responsibilities of the attorneys who represent the District, in May 2004, Mayor Williams held a public signing ceremony during which he changed the name of the Office of the Corporation Counsel to the Office of the Attorney General (OAG). This new name reflects the new vision of the Office. It underscores the renewed energy of the men and women who work for OAG, and the renewed respect it garners throughout the community. Like the Attorneys General throughout the United States we take seriously our responsibility to protect and defend our 'state' and our citizens as we conduct the District's legal affairs. We are, indeed, now both in name and in function the Office of the Attorney General for the District of Columbia.

Before addressing OAG's performance during Fiscal Year 2004, let me take just a moment to describe our duties and responsibilities. As you know, we are charged by statute with conducting the District's law business. Our team of approximately 515 attorneys and support staff handles approximately 22,000 cases and matters each year, covering some 300 different subject areas. The cases handled by Assistant Attorneys General and nearly 90 attorneys employed by the subordinate agencies touch the

lives of virtually every citizen of the District of Columbia in some manner. Despite the many organizational changes that occurred during Fiscal Year 2004 (FY 2004), the attorneys and staff of OAG continue to provide excellent and timely legal service to the District of Columbia.

The mandatory and discretionary duties of the OAG and agency counsel include:

- Representation of the District in nearly all defensive civil litigation including tort, contract, civil rights, equity and class action cases;
- Appeals of Civil and Criminal Judgments;
- Child Abuse and Neglect cases;
- Adult criminal and juvenile delinquency proceedings;
- Antifraud, Antitrust and Consumer Protection matters;
- Civil Enforcement of Regulations;
- Neighborhood and Victim Services;
- Child Support Enforcement;
- Government Ethics Issues;
- Personnel and administrative proceedings;
- Domestic Violence and Mental Health matters;
- Real Estate and Procurement transactions reviews;
- Economic Development and Revenue Bond Financing;
- Land Use, Public Works and Utilities matters;
- Reviews of Legislation and Rulemaking; and
- Supervision of Agency Counsel in the subordinate agencies.

OAG also provides fundamental legal services to the District, including transactional work and legal advice to the executive branch agencies, Council of the District of Columbia, District of Columbia Courts, dozens of Boards and Commissions, and Advisory Neighborhood Commissions (ANCs).

As you can see, OAG's responsibility for litigation, advice-giving and transactional assistance to the District government parallels that of most city attorneys, county attorneys, state attorneys general as well as the United States Attorney General. Indeed, I often receive mail intended for US Attorney General Gonzales. Unlike a number of our state and federal counterparts, and despite the massive restructuring, OAG continues to suffer from a lack of human and physical resources to fully perform these functions.

The men and women who work at OAG and within the Offices of the General Counsel in the subordinate agencies are second to none. They perform consistently high-quality legal work saving the District millions of dollars, protecting the public, and ensuring that the District's leaders have the best available legal advice. There are, however, too few attorneys, too few support staff, and too little money to provide them with the physical support they need to reach their potential. As I will discuss in a moment, despite these challenges we have achieved major successes. With additional support, we can truly become the first-class law office that the District deserves.

Budget and Performance

OAG works for the citizens of the District and they are entitled to know how our budget is structured and whether we are meeting the performance goals and standards set forth by the Mayor. I am pleased to report that we are maximizing the use of available funds and making substantial improvements in achieving our goals.

In Fiscal Year 2004, OAG had an authorized total revised budget of approximately \$62.3 million and 515 FTEs. Of that sum, \$28.9 million were in local funds. At the end of the fiscal year, OAG was left with \$662,012 in combined personal service and non-personal service local funds. Of that amount, approximately \$571,000 was from a last-minute reprogramming from the Settlements and Judgments Fund to cover litigation costs that could not be spent before the end of the fiscal year. Excluding that amount, OAG spent all of its local funds but for approximately \$91,000 of its personal service budget. While it is my goal to spend every authorized dollar, the fact that less than 0.3% of our local budget went unspent demonstrates that we are using our funds efficiently. Indeed, we have virtually no unfilled locally funded FTEs.

When I appeared before the Judiciary Committee last year, I discussed my frustration that OAG's strategic business plan and the manner in which the budget was developed did not accurately reflect the mission and functions of the office. Rather than budgeting according to the work performed by the Divisions and Sections comprising the Office, we were budgeted according to broad legal activities which cut across Section and Division lines. Thus, any one attorney needed to be allocated among

different programs. Moreover, our strategic business plan bore no resemblance to the structure and functions of daily operations of the Office.

I am very happy to report that with the approval of the City Administrator and the CFO we have revised our Strategic Business Plan and the manner in which we are budgeted so that we may benefit more readily from performance based budgeting. A copy of the Strategic Business Plan is being forwarded to your office. This plan reflects new, more meaningful measures by which OAG can assess its performance and the manner in which its budget is being utilized. The plan, and the new measures, will take effect in FY 2006, although we are already measuring these outcomes so as to have a baseline to compare against next year.

These changes notwithstanding, I am able to report that during FY 2004, OAG met or exceeded 79% of its measures and goals as set forth by the Mayor and as reflected in the OAG Performance Accountability Report, a copy of which is attached to my testimony. I would like to briefly summarize these results. There were a total of five programs and seventeen measures that were assessed during the past fiscal year:

A. Program Goal 1 – Litigation

Overall, OAG met expectations for the litigation program, reaching or exceeding five of the six measures in this program.

Residents should be pleased to know that OAG won 98 percent of the affirmative civil cases and 93 percent of the defensive civil cases that were litigated, exceeding the 90% goal set for OAG. Impressively, we did so while reducing the amount spent on tort litigation by an astounding 23%, amounting to a \$12 million reduction in costs for the District. The number highlights a stellar year for our General Litigation Sections, as the lawyers in those sections did not lose a single case in FY 2004. Matching these results, however, may prove challenging in FY 2005 not only because of the compound nature of the calculation, but also because of some complex litigation we foresee concluding before the end of this fiscal year. It is noteworthy that for FY 2005 OAG has been asked to further reduce its spending on tort litigation by 2% above the 23% reduction achieved in FY 2004. However, I am pleased to report that for the first quarter of FY 2005 OAG has maintained its pace for reduction of spending on tort litigation.

We also had outstanding performance in the area of juvenile delinquency where the goal was to provide rehabilitation services, through Court Social Services and/or the Department of Human Services, to 80% of juveniles prosecuted by OAG who were appropriately presented by OAG for rehabilitation. OAG exceeded this measure, reaching 88%.

OAG substantially attained the goal of meeting 90% of investigative reports satisfying internal assurance standards for timeliness, accuracy and completeness with a key result of 88%.

The one target in the litigation program not reached during FY 2004 was the requirement that OAG resolve 75% of adult criminal cases presented. In FY 2004, OAG presented and resolved 60% of adult criminal cases presented. As we learned during the year, given the time it takes for these cases to proceed through the court system, the 75% rate was numerically impossible to attain. OAG has since replaced the 75% standard with a more appropriate target for FY 2006.

B. Program Goal 2 – Transactions

Overall, OAG's Commercial Division, which includes the Real Estate, Bankruptcy/Tax/Finance, Economic Development, Land Use and Procurement Sections, is responding in a timely manner to client requests. Depending upon the complexity of requests, client requests for documents must be completed within 10 to 60 days. The one measure in this program required OAG to meet a single target of 90% timely completion rate on transactional agreements and documents. OAG reported an 88% key result for FY 2004, which reflects substantial compliance. Given the enormous pressure on this Division this past fiscal year – pressure caused by the tremendous increase in economic development and the legal activities surrounding the return of baseball to the District – achieving an on-time rate of 88% is nothing short of monumental.

C. Program Goal 3 – Legal Advice

This measure determines the timeliness of response to client requests of the Legal Counsel Division. Depending upon the complexity of requests, client requests for advice must be completed within 10 to 60 days. These requests come from the Mayor, executive agencies, the Council and the D.C. Courts, and include the interpretation of existing rules, statutes, and

constitutional provisions as well as the review of proposed legislation, rulemaking and Mayor's Orders. The Legal Counsel Division also responds to certain requests for legal information by members of the public and ANCs. OAG exceeded the single target for the performance measure for this goal by completing 95% of requests for legal review and advice within agreed-upon timeframes, significantly above the 90% target.

D. Program Goal 4 – Child Support

The Mayor, the City Administrator, and I have made the improvement of OAG's Child Support Services Division (CSSD) a top priority. More than 90,000 children depend upon the District's child support system to receive funds needed for food, shelter, health care, and education. I will talk more about the child support system in a few minutes, but I can report that during FY 2004 CSSD met two of its four measures in this program.

The first measure required a 2.5% increase in the number of child support orders established. CSSD exceeded expectations with a key result of a 14% increase in support orders. The agency also exceeded its target of a 2.5% increase in collections with a real increase of 16%, amounting to more than \$61 million dollars in collections. That is a tremendous amount of money collected for the District's youngest citizens.

However, under the two remaining measures – collections on arrears, and the percentage of notices of hearings successfully served – CSSD fell well below target. The drop in arrears collections in the District reflects the national downward trend in arrears collections and the decline in the national economy during 2002 and 2003. And the goal of 70% of notices served proved impossible to reach since more than one third of all persons needing to be notified have no known addresses.

E. Program Goal 5 – Agency Management

The fifth program goal, Agency Management, comprises five measures, two of which were measured directly by OAG during the fiscal year.

Two of the five measures – Cost of Risk and Percent variance of estimate to actual expenditure – are reported with citywide figures. A third measure, Dollars Saved by Agency-Based Labor Management Partnership

Project(s), was deemed unreportable and thus we have no information on that measure.

We did, however, meet the two remaining measures. OAG achieved an overall rating of 4.42 for telephone service quality, surpassing the target rating of 4 out of a possible rating of 5. This target measures four telephone service quality criteria: 1) Courtesy, 2) Knowledge, 3) Etiquette, and 4) Overall Impression. Lastly, the performance target of 70% for Key Results Measures achieved by OAG was exceeded in FY 2004. The OAG result for this measure was 79%.

Thus, overall OAG met or exceeded the vast majority of its performance contract measures.

OAG Division Reports

The formal performance measures do not tell the full story, however. Behind the numbers are cases and matters that directly affect the lives of District residents. We have had numerous successes and remain faced with a number of challenges in our operations. I would like to highlight some of those successes and challenges for you now.

A. Child Support Services Division

As I mentioned, more than 90,000 children and their families receive money that passes through the District's child support system. It is the largest Division within OAG, utilizes the largest single share of OAG's budget, and affects thousands of District families. The child support system came to OAG from the Department of Human Services in 1998, and we are committed to making the improvements necessary to ensure timely collection and disbursement of the funds.

Among the notable improvements this past year are the following:

- The District's automated child support system was certified by the federal government as meeting the rigorous standards satisfied by only half of the states in the United States. This is particularly noteworthy given that the system is written in an obsolete programming language with practically no documentation on subsequent changes. With the assistance of OCTO, OAG has

managed to secure a \$6 million capital IT investment to renovate this system to modern standards.

- The Child Support Services Division engaged in a strategic planning process that resulted in a three year plan to dramatically improve overall performance of intake, location of non-custodial parents, paternity establishment, and enforcement functions. That three year plan has been submitted to your office and sets forth measurable outcomes against which we can assess our performance.
- The Division was renamed from the Child Support Enforcement Division to the Child Support Services Division in recognition that it is a service-provider entity, and not strictly a law enforcement body.
- CSSD has greatly increased the number of support orders established. Although the target is an increase of 2.5%, there was an actual increase of over 14%. This trend continues into FY 2005, where we have maintained an increase of over 12% during the first quarter. As I also mentioned, collections increased a remarkable 16% during FY 2004.
- Every state is required to operate a state-wide child support distribution system. In the District of Columbia, while the enforcement function resides with OAG, up until very recently the distribution function was handled by the Superior Court of the District of Columbia. The bifurcation of the enforcement and distribution system led to inefficient service to our citizens and undistributed collections. I am pleased to report that OAG has taken the initiative to solve this longstanding problem. In January 2004, CSSD successfully entered into an MOU with the DC Superior Court to transfer the Child Support State Distribution Unit (SDU) from the Court to OAG. In September of last year, Systems Methods, Inc. (SMI) was selected to provide SDU transition and management services. Although the contract allowed 120 days for the transition, it was completed in 95. SMI now provides a simple way for non-custodial parents and their employers to make support payments online. The method decreases the potential for lost payments and ensures such payments reach custodial parents in a timely manner. The new SDU is functioning with stellar efficiency. It processes up to one thousand support checks

per day with just a 12 hour turnaround from receipt to payment to custodial parents.

Of course, with a program as large and complex as child support, there are many hurdles still to overcome. Because the child support program is regulated by the federal government, the District is subject to certain penalties if we fail to meet mandatory guidelines. While we have made substantial improvements in many areas, we still fall short and continue to incur fines.

We have experienced challenges with establishing paternity, for example. The District's Paternity Establishment Percentage (PEP) is one of the measures used nationally to assess program performance. The District's PEP (including voluntary acknowledgments of paternity) was 64% in FY 2004, representing a zero increase over FY 2003. CSSD is concentrating considerable resources in FY 2005 to educate area hospitals, including training sessions about hospital paternity programs, to address any hindrances to paternity acknowledgment. CSSD is also focused on developing an automated interface with Vital Records for the exchange of birth and death records, and paternity acknowledgments.

We are also working on improving the use of electronic funds transfer (EFT) for the collection and disbursement of child support funds. This would streamline the processing function, save time and resources in posting procedures, and get the money into the hands of the custodial parents as quickly as possible. Members of this Committee may be surprised to learn that some of the District's largest employers, including the District of Columbia Government, the Washington Metro Area Transit Authority and George Washington University, are submitting hundreds of individual payroll deduction checks each month for their employees who are required to make support payments, instead of using electronic funds transfer. Giant Foods, for example, submitted 376 separate checks for Giant employees during the month of February, 2005, alone. Metro submitted a total of 1,122 payments in January and February, 2005. Numerous man hours could be saved if these employers were to submit funds electronically. OAG would support the use of incentives to make these employers partners in the child support process.

Overall, the child support system demonstrated substantial improvement during the past year and we will continue to make it a priority during FY 2005 and 2006.

B. Family Services Division

As part of my ongoing effort to improve the quality of legal representation in family cases handed by the District, I recently hired a new Deputy Attorney General for OAG's Family Services Division, Catherine Motz. Ms. Motz brings vision and energy to this reconstituted Division that handles domestic violence, child protection and mental health matters. Like the Child Support Services Division, the Family Services Division touches the lives of our most vulnerable citizens. Here, again, we continue to demonstrate leadership:

- OAG attorneys represent the District and the Child and Family Services Agency in all child protection cases. This past year we increased the number of Child Protection Sections from three to four, each led by a Section Chief. With an additional Section, we can better supervise the attorneys and cases, emphasizing the need to achieve permanence for these children. Indeed one of the four Child Protection Sections is dedicated to matters involving the Termination of Parental Rights (TPR), and focuses on the filing and litigation of these TPR cases, so that children in the District's care can be made legally free for adoption.
- OAG filed 127 TPRs during calendar year 2004. During the fiscal year, 412 adoptions were finalized and 268 guardianships were achieved, thus promoting permanence for over 800 children.
- To improve Child Protection case continuity, attorneys now maintain vertical prosecution, and thus are extremely familiar with issues in their cases as well as the children, parents and guardians involved. This enhanced knowledge and representation moves children through the system more quickly and allows OAG to better meet the strict timelines imposed by local and federal law.
- OAG provides direct legal representation to the majority of domestic violence victims seeking civil relief by appearing at the Domestic Violence Intake Center (DVIC) at the DC Superior Court, and at the

satellite center at Greater Southeast Community Hospital. Approximately 3,549 people signed up for services at the DVIC in calendar year 2004. Approximately 1,565 people signed up for services at the satellite DVIC at Greater Southeast Community Hospital. During the past fiscal year we have shifted our focus to providing more representation to victims of domestic violence who would otherwise proceed through the system pro se. The statistics are revealing:

Of those who signed in and received assistance:	
Received advocacy services	78%
Received civil legal intake services	72%
Sought child support assistance	21%
Met with advocates regarding related criminal matter	14%
Returned for additional civil legal assistance	12%

Of the 4,015 signing in who indicated where they live:	
Ward 8	41%
Ward 7	20%
Ward 5	13%
Ward 4	11%
Ward 2	9%

Of those who utilized the Greater Southeast Hospital satellite center:	
Reside in Ward 8	70%
Reside in Ward 7	27%

Of those who utilized the Superior Court DV Intake Center:	
Ward 8	25%
Ward 5	20%
Ward 4	16%
Ward 7	16%
Ward 2	13%

C. Public Safety Division

The Attorney General has the responsibility of using the legal system to help protect the safety and well-being of the District's citizens. As part of

the restructuring of the OAG, I established a Public Safety Division to devote attention to the safety needs of our neighborhoods.

- The Neighborhood and Victim Services Section (NVS) has two primary functions: (1) to provide aggressive, proactive assistance to victims and witnesses of juvenile crimes under a federal Byrne grant; and (2) to provide legal assistance and enforcement support with respect to civil and criminal violations related to quality of life and housing code violations within the District of Columbia. The NVS staff regularly attends Ward, community and CORE team meetings to listen to the legal needs of the community and work with our District and federal partners to address them. During FY 2004 to date, NVS has had success with illegal drug nuisance properties, illegal dumping activities, abandoned autos, prostitution, unlicensed businesses, illegal construction, abandoned/vacant property and building code violations. In FY 2004, NVS was responsible for identifying nearly 100 nuisance properties. Abatement letters were sent to the owners – and all have either resulted in compliance or criminal prosecution.
- NVS is also working hard to prosecute repeat housing code violators. Criminal actions were recently brought against two known violators, Oladele Dixon and Frank Economides who are facing numerous counts of housing and building code violations and criminal charges.
- OAG shares criminal prosecution authority with the United States Attorney's Office for local offenses. During FY 2004, OAG made significant improvements in the manner in which it handles criminal cases. Better charging and plea policies, better case processing, better training, and an increase in staff has resulted in the increase in the number of cases brought and the number of convictions from FY 2003 to FY 2004:

FY	Total Cases	Convictions¹	Conviction Rate
03	7,347	1,371	19%
04	8,295	2,290	28%

¹ Convictions, as used here, include only guilty pleas and finding of guilt at trial. It does not include cases where the defendant posted and forfeited collateral, nor does it include those cases resulting in diversion.

Moreover, a significant number of additional cases, approximately 3,100, were successfully resolved in other ways. For example, the Criminal Section, working with the Community Court, has set up or participates in a number of diversion or other programs aimed at allowing low level offenders alternative means of resolving their cases. During FY 2004, approximately 1,100 people successfully completed a diversion program. Additionally, OAG continues to offer first time offenders charged with No Permit, Operating After Suspension, and Operating After Revocation an opportunity to obtain a valid driver's permit, and will dismiss such cases once the permit has been obtained. Some 450 people successfully resolved their cases by correcting their problems at the Department of Motor Vehicles.

Another 1,300 defendants charged with certain low level offenses were allowed to post and forfeit collateral to resolve their cases. Allowing such defendants to post and forfeit both punishes defendants by requiring a monetary payment and aids OAG and the Superior Court by creating an alternative to requiring a criminal conviction for these designated low level offenses which often allows a more expeditious resolution of the cases.

- OAG has three special purpose funds that it maintains for public safety litigation: anti-trust, anti-fraud and consumer protection. At the end of FY 2004, there was approximately \$1.4 million in OAG's Antitrust and Consumer Protection Funds derived from case settlements and judgments. Presently we have one full-time attorney and one part-time attorney devoted exclusively to antitrust enforcement. We have been fairly conservative in using these funds to pay expert witness fees and the wages of part-time, short-term paralegals hired to assist antitrust litigation.
- Fiscal Year 2004 was a productive one for the antitrust and consumer protection areas of the office, where we raised more than \$200,000 from three settlements and an attorney's fee award. OAG participated in the multi-state consumer protection settlement involving drug-maker Warner Lambert, LLC a subsidiary of Pfizer, Inc. The settlement resolved allegations that the company violated state consumer protection laws by misleadingly marketing the drug *Neurontin*. OAG also won a settlement in the merger of First Data Corporation and Concord EFS, Inc. The acquisition violated federal

antitrust laws by substantially reducing competition among debit networks.

- At the end of the fiscal year, the Antifraud fund contained \$30,000. These contributions came from some civil false claims cases and some tax fraud prosecutions, though OAG never had the resources to dedicate attorneys exclusively to this work. We did, however, recently reach a settlement agreement with the real estate firm of Cushman and Wakefield of Washington, D.C., Inc. which will substantially increase our antifraud litigation reserve. In January, the company agreed to pay the District \$4,800,000 to settle claims by the District in connection with a project to renovate District government office space at One Judiciary Square. The agreement also resolves a dispute regarding work at the Reeves Center. At the same time, my Office filed a lawsuit under the False Claims Act in the DC Superior Court against other companies and individuals for their roles in submitting or approving false claims.²
- The Public Safety Division was instrumental in helping to pass the Omnibus Juvenile Justice Act of 2004 working closely with the EOM, Councilmember Kathy Patterson, then Chair of the Judiciary Committee, and other members of the City Council. This Act lays the foundation for critical changes to the juvenile justice system. The measure (1) ensures greater accountability on the part of youth, parents, and caretakers; (2) better meets the needs of crime victims and assures their safety; (3) protects members of our community, and

² The Anti-Fraud Fund, established by D.C. Code § 2-308.20, is capped at \$2 million. Contributions/collections into the Fund are from criminal fines, civil penalties, and damages recovered in cases brought pursuant to the District's civil and criminal False Claims Act. Because resources to aggressively pursue fraud and false claims matters have been limited, there has not been a great deal of money deposited to the Fund until recently. Last year, OAG dedicated additional resources to civil false claims work and entered into an MOU with OTR to fund a criminal tax fraud prosecutor. As a result, deposits into the Fund are at an historic high. Between tax fraud and civil false claims cases, over \$1.2 million has been deposited into the Fund in the past year alone. Because the Fund's balance has finally reached a point where it may be used to hire staff, as with Consumer Protection and Anti-Trust work, OAG is now intending to hire staff who will be dedicated exclusively to civil and criminal false claims work. Accordingly, OAG has requested budget authority for FY 2006 to hire at least two attorneys and one paralegal or investigator to be dedicated exclusively to this work.

(4) improves services to the youth who enter the juvenile justice system.

- In the fall of 2003, in response to the growing auto theft problem in the District, the OAG Juvenile Section worked along with the Office of the United States Attorney and the Metropolitan Police Department to develop a curriculum for a four-hour mandatory in-service training course for Metropolitan Police Department Officers on the topic of auto theft. As a result, OAG now takes a tougher stance on diversion, consent decrees, and plea negotiations whenever a stolen car is involved in a juvenile delinquency case. For example, most juveniles who are charged with the Unauthorized Use of a Vehicle, or UUV, are also routinely charged with the Theft of a Vehicle. Also, most juveniles charged with UUV are not offered diversion or a consent decree as a way to resolve their cases.
- In addition to taking steps to curb auto theft among juveniles, OAG is working closely with the DC Public Schools and the Superior Court of the District of Columbia to stem rising truancy rates. Dozens of parents have been arraigned for violations of the District's Compulsory School Attendance Act (CSA) during the 2004/2005 school year. Charges were brought after close collaboration with the D.C. Public School Superintendent, Dr. Clifford Janey, who instructed school officials to report the names of all parents who had failed to get their children immunized, and were therefore unable to enroll their children in school. Under the measure, parents, guardians and caretakers can be criminally prosecuted if they fail to ensure that children in their custody or control are attending school regularly. The Court has established a dedicated truancy court, designed to closely monitor the truant students and their parents and guardians. Parents or guardians who have had no other criminal convictions, and who plead guilty to CSA charges, are given the option by OAG of deferred sentencing for a period of at least one full school year. These deferred sentencing agreements require children to attend school without any unexcused absences or tardiness during the full period of the agreement. In addition, parents/guardians are required to follow various conditions of release such as: (1) seek and/or maintain employment or attend school; (2) perform community service; (3) spot drug test and alcohol screening and treatment if necessary; (4)

attend parenting classes; and (5) attend family and individual counseling as appropriate. If CSA defendants comply with all conditions of the agreement, their cases are dismissed at the end of the period.

During the 2003/2004 school year:

- DCPS made 132 referrals;
- 96 CSA cases were filed;
- 29 cases were declined for prosecution (In 22 cases, a child older than 12 was referred to Child Support Services for Persons In Need of Supervision or PINS. Seven cases were no papered because of insufficient evidence.);
- 85 of 96 cases were served (75 continued for status to decide if trial or plea; 4 were dismissed at status (parents/guardians tendered proof for their child's absences); and 6 pled and entered the deferred sentencing program).

Despite the success of these various public safety programs and initiatives, because of budget constraints, there are many areas in which the OAG has the authority to prosecute but we simply lack the manpower to do so. These areas include:

- Taking part in the multi-state investigation in the identity theft scheme recently uncovered at ChoicePoint, Inc., where thousands of Washington area residents were among those whose personal and financial details were allegedly sold to fraud artists.³
- Environmental crimes.
- Initiatives to protect the District's population of senior citizens.
- Effectively monitor the numerous non-profit organizations in the District to ensure that they are living up to the requirements of their charters.

³ See, Washington Post article, dated 2/21/05. As many as 4,500 people in the District, Maryland and Virginia were among 145,000 people whose names, addresses, Social Security numbers and, in some cases, credit files were electronically shipped by ChoicePoint Inc. of Alpharetta, Ga., to people posing as business officials in the Los Angeles area.

D. Civil Litigation Division

The Civil Litigation Division handles all of the defensive litigation brought against the District of Columbia. We represent the District, its agencies, and its employees when acting in an official capacity when they are sued. Indeed, we also represent independent agencies, such as the DC Public Schools and the Office of the Chief Financial Officer, when they are faced with litigation. OAG's Civil Litigation Division had a successful year in FY 2004. As reported above, the Division had an overall success rate of 93%, exceeding our target goal of 90%. The 42 attorneys in the seven litigation sections of the Division handled an average of 26 cases each.

FY 2004 Average Caseloads	26
FY 2004 Total Civil Cases Received	681
FY 2004 Total Claims Received	263

The types of cases handled by the Division vary widely in subject matter, complexity, and potential impact on the District of Columbia:

- The Civil Litigation Division represents the District in class action and equity cases where numerous plaintiffs are seeking institutional change, sometimes along with money damages. These cases include *Jerry M.*, *Blackman-Jones*, *Petties*, *Evans*, *LaShawn* and *Dixon* and consume an enormous amount of staff hours working with the affected agencies, court monitors, plaintiffs, and appearing in court.
- OAG recently negotiated the settlement reached in the mass arrests at Pershing Park in the September 2002 World Bank/International Monetary Fund demonstrations. Under the settlement agreement in *Abbate v. D.C. et al*, the District agreed to pay plaintiffs and their attorneys \$425,000. There are a total of four cases filed based on the events arising out of the Pershing Park protests. To date, the *Abbate* case is the only case which has been settled.
- One of the most recent cases being handled by Civil Litigation Division is the petition of CSX Inc. before the U.S. Department of Transportation Surface Transportation Board to have a recent law enacted by the Council, the Terrorism Prevention in Hazardous Materials Transportation Act of 2005, declared preempted by federal

law. That Act was signed into law on February 16, 2005, by Mayor Anthony Williams. OAG is defending the action before the Surface Transportation Board, as well as a second case CSX Inc. filed in Federal Court, which also challenges the Act on the ground that it violates the Commerce Clause of the U.S. Constitution.

- Similarly, we are defending Title II of the recently-enacted AccessRx legislation which seeks to help control pharmaceutical costs by creating transparency in the pricing schemes and deals negotiated by the pharmaceutical benefits management companies. That legislation is also being challenged on preemption and constitutional grounds.
- Other successes range from constitutional claims to slip and falls. A small sampling of these cases include:
 - *Willie Walker v. District of Columbia, et al.* The District prevailed in this case where the plaintiff filed suit against four police officers and the District alleging assault and battery, negligence, false arrest, and intentional infliction of emotional distress, after the plaintiff was apprehended and temporarily detained as a suspect in a recent armed robbery.
 - The federal court granted summary judgment in the District's favor in a case where the Department of Corrections searched the lockers of all correctional officers at the DC Jail and conducted a search of the automobiles of officers who reported for work and wished to park in the lot immediately adjacent to the Jail. The FOP, Department of Corrections Labor Committee filed a complaint in federal court challenging these searches on Fourth Amendment grounds.
 - *Lois Tett v. DC.* The District prevailed in this case which involved a trip and fall over a Metro subway grate on a DC sidewalk. It was the District's contention that plaintiff was running for a bus and was not paying enough attention to where she was going. Plaintiff suffered severe injuries and demanded \$75,000 dollars prior to trial. The jury found contributory negligence on plaintiff's part and ruled for the District.

- In Washington Development Group, the District regained title to the air rights over the I-395 tunnel, ending years of dispute over who has the right to develop this valuable property. While that case remains on appeal, the District is well-positioned to preserve the trial court's ruling.

E. Appellate Division

OAG's Appellate Division is responsible for representing the District in all of its appellate matters in the District of Columbia Court of Appeals, the US Court of the Appeals for the DC Circuit, and the Supreme Court of the United States. These appeals include administrative, civil and criminal cases.

Two of the more notable cases that are now being handled on appeal are *Sandra Seegars v. John D. Ashcroft* and *District of Columbia v. Beretta* – both are key gun cases with implications for the citizens of the District. In *Seegars*, plaintiffs made a pre-enforcement challenge to the District's gun laws, all of which are criminal statutes. The Court ruled that none of the plaintiffs had standing to bring the action. On January 11th of this year, OAG argued the *Beretta* case. The public nuisance and negligence suit was brought by the District and nine individual victims of gun violence against some 26 firearms manufacturers. The District and the nine victims are attempting to make gun manufacturers exercise control over their dealers and stem the flow of illegal firearms into the District. The Court has not yet ruled on this matter.

F. Commercial Division

The Commercial Division continues to provide essential legal advice, transactional support and litigation assistance to those undertaking the financial, planning and economic development initiatives of the City. The attorneys in this Division provide vital legal services to the District, including structuring and formulating complex economic development and financial transactions. At the top of the list is the negotiation of the stadium site for the Washington Nationals.

While the work in support of baseball is for a limited time frame, it will require more resources in both the Real Estate and Procurement sections to prevent a drain on resources. I have requested the City Administrator to

increase funding so that OAG may hire additional attorneys. The Office is also preparing a solicitation of outside counsel, so that if needed, we will have attorneys available both in-house and outside OAG to facilitate contracting and real estate issues that may arise under the compressed timeframe of the stadium deal.

Although baseball has been at the forefront, the Commercial Division also worked on numerous other matters, including:

- drafting the Abandoned Vehicles and Towing Enforcement Act, allowing the District to move more quickly to remove and dispose of abandoned vehicles;
- providing legal assistance, and in many instances, providing creative solutions to DCRA and WMATA to facilitate a program to allow signs on Metro trains;
- reviewing for legal sufficiency hundreds of contracts in excess of one million dollars and providing procurement training to agencies, such as CFSA, that have independent procurement authority;
- representing the District in the *Craig* litigation which challenges the property tax assessment method utilized by the Office of Tax and Revenue with the Office of the Chief Financial Officer;
- drafting dozens of opinions and orders for, and providing advice and guidance to, the Board of Zoning Adjustment helping them keep pace with the explosion of construction and development occurring throughout the District; and
- collaborating closely with the Department of Housing and Community Development to provide legal support to their development efforts.

Selected Initiatives for FY 2004

During this past fiscal year, my focus has been to improve the efficiency of the Office as it relates to the defense of the District and protection of our citizens. I am therefore pleased to report on a number of very important initiatives that helped us further that goal:

A. Reorganization of OAG

OAG successfully reorganized and restructured the management of the Office as we pledged at our oversight hearing last year. We put in place a streamlined structure that flattened management, aligned Divisions based

on practice areas, employed consistent definitions of Sections and Divisions, balanced the number of line employees per manager, reduced the number of titles, and promoted more effective and efficient management. The current organizational chart is attached to this testimony as an exhibit.

B. Completion of the Collective Bargaining Process with Local 1403

After three years of negotiations and arbitration, and with the able assistance of the Office of Labor Relations and Collective Bargaining (OLRCB), the District entered into its first Collective Bargaining Agreement (CBA) with AFGE Local 1403, which represents the non-managing attorneys within OAG. Although there has been agreement for some time on the non-compensation portion of the CBA, there had been protracted negotiations and eventual impasse over compensation. During FY 2004, that impasse led to arbitration, an arbitration award, and an eventual settlement between the District and Local 1403. That settlement will permit the attorneys to be paid an amount significantly more comparable to that of federal attorneys, as is required by District law. We expect to have the pay changes required by the CBA in place in the next month or so.

I would be remiss at this point, if I did not take a moment to recognize the members of Local 1403 and thank them for their professionalism during the negotiation process. Although the discussions were sometimes pointed and full of emotion, they never allowed labor-management disagreements to interfere with the quality or quantity of their work. Throughout the multi-year negotiation process, the union members continued to put forth their best efforts and produce high-quality legal work. On behalf of the District of Columbia, for this I, and my managers, thank them.

C. Creation of an Attorney Management Pay Scale

During the negotiations with Local 1403, it became apparent that there was an appearance of a conflict because the attorney managers at OAG were paid on the same scale as the line attorneys. Thus, as they participated in the negotiations over wages, they were, in fact, negotiating their own pay. With the help of DCOP, we proposed, and the Council approved, an attorney manager pay scale with pay bands instead of grades and steps. With this change, the appearance of a conflict is avoided and the Attorney General now has the flexibility to ‘right-size’ the pay received by the managers. This

pay scale, too, should take effect within the next month or so.

D. Creation of OAG Labor-Management Partnership Council

In the spirit of good labor-management relations, during FY 2004 OAG established a Labor-Management Partnership Council (LMPC) to provide a forum to address concerns, outside of the CBA, that arise from time to time between managers and union members. The OAG LMPC meets regularly and includes the senior managers and representatives from the attorney and support staff unions. We are working on identifying pothole projects and have already jointly sponsored several activities:

- We have adopted Terrell Junior High School in an effort to provide tutoring, mentoring and support to its many deserving students. OAG's LMPC sponsored a holiday party at the school and ensured that each child received a gift.
- By conserving some funds at the end of FY 2004, we were able to enter into a contract with the Lipton Corporate Child Care Center, which provides OAG employees with drop-in child care in a state-of-the-art downtown facility for reduced rates.

E. Establishment of OAG Liaisons to the Executive Office of the Mayor

Our talented team of attorneys is handling a larger number of cases, and we are called upon with greater frequency to provide legal analysis and insight to the Executive Office of the Mayor (EOM) and to members of the Council on matters which intersect law and public policy. To address this, the Legal Counsel Division has started a pilot project in which eight of the attorneys in the Division have been assigned as liaisons to the EOM to assist in four key areas: (1) Finance and Revenue/Economic Development; (2) Government Operations; (3) Human Services; and (4) Public Safety. This project is designed to forge a closer working relationship with the EOM and the Council and to assure that all significant legal issues are identified and adequately addressed for bills in the early stages of the legislative process.

F. Papering Relocation Project

We have developed a plan to relocate our DC criminal and traffic papering operation from One Judiciary Square to the Superior Court of the District of Columbia. Currently, police officers who have made arrests need to travel from the courthouse to Judiciary Square for members of OAG's Criminal Section to review the paperwork, interview the officer, and make charging decisions. We call this process 'papering.' OAG has worked closely with the Court and the United States Attorney to locate the space within the courthouse to perform this papering function. By sharing space with the USAO for the papering process, we can also better share information and save on critical police officer overtime. Less time papering means more time for the officers to be out in the community.

G. Establishment of a Freedom of Information Act Webpage

As a part of the effort to enhance the public's understanding of the District of Columbia Freedom of Information Act, the OAG collaborated with Office of the General Counsel for the Executive Office of the Mayor to devise a detailed, informational webpage explaining the Freedom of Information Act. The webpage explains the Freedom of Information Act, the exemptions to disclosure, fees and fee waiver, how to file a request and the procedure for seeking review of a denial. The information was placed on the Government Resource Center website, along with a comprehensive list of District of Columbia agency Freedom of Information Officers.

H. Reestablishment of the OAG Honors Program

Through this program, OAG recruits prospective attorneys without requiring bar membership at the time of hire. Candidates are highly qualified third year or graduate law students who attend a DC law school or who hold positions as judicial law clerks for District of Columbia local or federal judges. Candidates are recruited in the fall for hire in the fall of the following fiscal year. This allows OAG to vie for top notch candidates who are being courted by law firms and the Justice Department.

I. Creation of Customer Service Manager

Since I was appointed in June of 2003, OAG has consistently struggled to meet the Mayor's customer service guidelines. While there are

many reasons for this, chief among them is that OAG tends to be the agency to which all calls, inquiries, and e-mails are referred when others in the government do not know how to respond. Thus, we spend considerable time trying to determine what the problem is, who is in the best position to address the problem, and attempting to follow up to ensure that the 'end' agency completes the task. We also were burdened with two separate measures – one for OAG and one for Child Support – even though we are one agency. Consequently, for nearly two years, we consistently placed at the bottom of the list of all agencies in overall customer service.

My staff will tell you how frustrated I was each quarter to see us at the bottom of the list. It was simply unacceptable for the District's lawyers to be seen as non-responsive by the community we are paid to serve. I was determined to change this. We developed a program that included (1) establishing a customer service coordinator; (2) training by the Mayor's quality assurance unit; (3) combining the OAG and CSSD measures; and (4) making customer service an explicit requirement of each manager in his or her PMP work plan, and every employee in his or her Individual Accountability Plan.

I am thrilled to report that for the first quarter of FY 2005, we have moved from dead last of nearly 60 agencies and offices that are measured, to the top third of all performers. This improvement is nothing short of astounding and the men and women of the office, along with Gail Stern, Rocelia Jackson, and Keisha McCauley-Jackson who work with customer service, are to be commended for their monumental efforts.

J. Improvements in the Evaluation Process

In FY 2004, the Evaluation Review Committee was formed in response to support staff complaints through their union representative that evaluations were not consistent within the OAG and, therefore, not consistent among the membership of the American Federation of State, County, and Municipal Employees (AFSCME) Local 2401. The Evaluation Review Committee assessed each OAG support staff evaluation and corrected any inconsistencies. The members of the Committee devised an objective evaluation tool and assessed each support staff evaluation in accordance with the evaluation tool. The results were shared with AFSCME Local 2401 who concurred that this was a fairer process than that originally used. As a result of several subsequent labor-management meetings, an

evaluation tool was created for use during the FY 2005 evaluation period. This proactive method of handling the imbalance in the evaluation process served to improve morale and avoid very costly litigation.

As for the attorney evaluations, I personally reviewed each and every attorney evaluation for OAG and agency attorneys. The process was a rigorous one but I felt that it was important to ensure that evaluations were detailed, honest, consistent, and informative. With the change in the pay system, I wanted to ensure that we stemmed the tide of evaluation inflation. Many evaluations were sent back to ensure front-line managers were giving an honest and accurate assessment of the performances of their subordinates. I am particularly proud of the quality of these evaluations. I personally believe there is always room for improvement in every position – including my own – and the resulting evaluations reflect that philosophy. Despite the change in the evaluation system, each of the evaluations was completed on time.

K. Upgrading OAG's IT System

Recently, OAG's IT Team upgraded our case management system – ProLaw – to the latest version of the software. To further streamline our IT capabilities, OAG is anticipating integrating ProLaw with the document management application when it is selected by OCTO's Integrated Electronic Document Management Project (IeDM) Consortium.⁴

OAG was one of the first Mayoral agencies to establish an MOU with OCTO for Level I and Level II desktop support. OAG has over 600 desktops and its Local Area Network servers under the MOU. All first line troubles are handled by ServUs. We purchased more than 600 new desktop PCs in FY 2004, and expect this state of the art equipment to serve OAG employees and contracts for at least three years. Starting in FY 2006 one-third of the desktop computers will be replaced with new equipment and one-third will be changed out every year thereafter with 100% being replaced after three years.

⁴ IeDM is a collaborative effort between the Center for Innovation and Reform (Office of the City Administrator - OCA), the Office of the Secretary (Executive Office of the Mayor - EOM) and Business Process Innovation (Office of the Chief Technology Officer - OCTO)). OAG is represented on the board for the consortium and was one of the first agencies interviewed for its needs and requirements for document management.

L. Intensified Training Program

The continued professional training of the attorneys who work at OAG is one of my primary commitments. If the attorneys working in this office are not abreast of current legal issues and trends, they are less effective in their representation of the District and its citizens. In FY 2004, OAG offered 88 training courses to attorneys, and 99% of OAG and Agency Counsel complied with the Legal Service Act requirement of obtaining at least 12 hours of Continuing Legal Education credits during the evaluation year.

M. Increased Public Information

The public is entitled to know how the Office of the Attorney General operates for their safety and protection. To that end, I have hired Traci Hughes, a highly qualified communications specialist who brings to the OAG a combination of legal and journalism expertise. Since her arrival, we have greatly increased the number of press releases, news reports, and interviews we provide to the media. Her efforts have been one of the main reasons the community has an increasingly positive view of the Office.

Ms. Hughes also spearheaded our logo design contest. With its new name, OAG needed a new logo. We approached the District's public high schools and asked the students to design a logo. It was an opportunity for OAG to talk about how we touch the lives of all DC citizens, and an opportunity to learn about the symbols that represent the District and the legal system. We will be unveiling the winning design in the next week.

Settlements and Judgments Fund

When I appeared before the Committee on the Judiciary last year, I reported on the status of the Settlements and Judgment Fund (the Fund), because it was under OAG control through FY 2003. During FY 2004, control of the Fund was transferred to the Office of Risk Management (ORM) as part of the organization of that office. While OAG has access to the Fund to settle litigated cases, pre-litigated claims are now being handled by ORM. Pursuant to a Memorandum of Understanding (MOU) between the OAG and ORM, ORM has exclusive authority to negotiate and settle pre-litigation claims, while OAG has exclusive authority to negotiate and

settle lawsuits. Both ORM and OAG must seek Mayoral approval for the settlement of claims or lawsuits for sums greater than \$500,000. OAG and ORM have established procedures that allow OAG's financial office to issue settlement and judgment checks in cases handled by OAG. Because of administrative issues, ORM did not begin to actually process settlements and judgments negotiated or obtained by OAG until October 1, 2004.

This Committee has asked OAG for its impression of how the process has been working with the Fund under ORM control.

- First, the claims process is not managed by a lawyer or other individual with experience in municipal law. Often times, to decide on whether a claim is meritorious and thereby worth settling and for how much, it is necessary to be familiar with municipal law or the defenses available to the District of Columbia for various causes of actions. Given that the person who manages claims and persons in his/her chain of command are neither lawyers nor familiar with municipal law, the claims process is at a disadvantage. The Civil Litigation Division (CLD) has begun to see an increase in the number of auto accidents, slip and fall, and other low-end tort cases that, for sound business reasons, should be settled, rather than encumbering an attorney's time, and more of the city's dollars, to defend. From time to time, ORM may seek the advice and counsel of some of the attorneys in the CLD in connection with various claims. If ORM does not settle claims which should be resolved at the claims stage, there may be a surplus of funds in the Fund at the end of the fiscal year, which will be lost if unused and thus unavailable to support the inevitable lawsuits that will follow.
- Second, since the transfer of the Fund, it appears that the receipt of many claims has not been well-documented. Pursuant to D.C. Code § 12-309, prior to filing a claim for unliquidated damages in court for non-constitutional or federal statutory claims, a claimant must send a letter to ORM notifying it of the claimant's intent to assert the claim. If such a letter is not received by ORM, OAG attorneys can move to dismiss the lawsuit. Thus, proper documentation of received claims is very important. Several attorneys have requested that ORM both conduct a search for claim files and complete an affidavit documenting that no such claim was received (if ORM's search revealed none). On a number of occasions, after attorneys have made

this representation to the court with supporting ORM affidavit, opposing counsel actually produced a letter from ORM acknowledging the claim, or produced a copy of the claim letter with ORM's date stamp. If, in the court's view, ORM's documentation of claims is unreliable, OAG fears that attorneys will have to try many cases that should have been dismissed on motion.

- Third, OAG attorneys do not always receive ORM's claim files in a timely manner, impairing our ability to properly defend the District once a claim has proceeded to litigation. Presently, once a lawsuit is filed, attorneys request a copy of the claim file (if any) from ORM. The attorneys need this file to properly answer or otherwise respond to the complaint, and further defend the city. On many occasions, the attorney requests the claim file and it is not received until months later, after a manager gets involved to request the status of OAG's file request.
- Fourth, requiring OAG to submit payment information to ORM to get a check issued increased the length of time it took to process settlements and court ordered payments. However, under a new protocol in place which allows OAG to simultaneously submit payment requests to the Chief Financial Officer along with the ORM, the delay in processing payments should be reduced.
- Finally, OAG has an extremely limited litigation budget. Indeed, it was cut in 2002 and 2003, and now is about \$400,000. That is generally insufficient to mount the type of defense necessary in the many cases filed against the District. OAG needs to be in a position to determine whether it is a wise investment of funds at the front end of litigation in an effort to avoid a large potential payout at the end. Without day-to-day management of the Fund, that analysis has become extremely difficult. Unless or until the litigation budget is substantially increased, we may need to look to the Fund and request reprogramming some of these funds to help offset litigation costs to minimize the number of large judgments awarded against the District.

Vision

As the District's law firm, OAG needs to have the resources and vision to enable it to reach its full potential. As I mentioned in the

introduction to my remarks, the men and women who work at OAG and in the legal offices of the subordinate agencies are among the most talented legal staff in the District of Columbia. Each of them could have more lucrative careers in the private sector or the federal government. Each of them chooses to work for the District, recognizing that they can contribute to the safety, the well-being, the economic security and the better governance of our citizens. We work for the District of Columbia because we care about the District of Columbia.

I would like to see the Office of the Attorney General reach its full potential. We should be able to defend those cases that need to be defended. We should be able to prosecute local crime and not pick and choose cases based on resources. We – and not the United States Attorney – should be seen as the primary defender of the District’s citizens. We should have attorneys doing legal work, aided by an appropriate number of qualified support staff. We should look to a unified legal service where the District’s lawyers – whether in OAG or in the agencies – are deployed to efficiently address the legal needs of the city and where they are all paid competitive wages. We should be able to work in a space that is befitting the District’s law office.

What will this take? In addition to the initiatives that I outlined above, I would urge the Committee to consider the following:

- **OAG needs more staff.** We turn away potential cases because of a lack of resources and we are simply asked to do too much with what we have. One only needs to look at the United States Attorney’s Office to appreciate how truly under-resourced OAG remains in the area of public safety.
 - OAG has a total of 31 Assistant Attorneys General handling approximately 14,000 criminal and juvenile delinquency matters. By comparison, the United States Attorney handles approximately 18,000 local offenses with 175 attorneys.
 - OAG has 11 Assistant Attorneys General handling all of the District’s Appellate matters which encompass civil, criminal, family and administrative cases. The US Attorney has 30 appellate lawyers – almost three times as many – handling primarily criminal cases.

We have many grant funded, intra-District, and other funded positions. We are also preparing a coordinated effort to bring on more pro bono attorneys to assist us with our many cases. However, we remain well below the recommended level of staffing as outlined in the report by Hildebrandt International. Indeed, it is the common practice of attorneys in my office to do their own copying, document discovery, document production, and other tasks more economically handled by skilled support staff, because we simply lack the resources. Many attorneys have neither paralegal nor secretarial support.

- **OAG needs more flexibility in assessing the legal needs of the District and redeploying the lawyers.** Although the Legal Service Establishment Act gave the Attorney General supervisory control over the agency lawyers, it perpetuated a bifurcated legal service where OAG has supervisory control, but does not have control over the budgets or FTEs of subordinate agency counsel. Thus, any one agency can affect the overall allocation of legal resources by choosing to fund, not fund, or de-fund, any particular legal service position. Agencies without lawyers place a heavier burden on OAG, and thus their sister agencies. Other agencies have numerous attorneys, some of whom spend significant time on non-legal functions. There is also duplication of efforts and lawyers are spending their time on matters that are more efficiently handled by subject matter experts. No agency has allocated the resources to put in place the central case management system that would allow them to track their own work and have access to up-to-date information on matters and cases being handled by OAG.

During FY 2004, OAG undertook an analysis of the agency counsel and concluded that there were redundancies and misallocations that could be remedied by permitting a more strategic deployment of agency legal resources. I have made such a recommendation to the City Administrator to consider as part of the FY 2006 budgeting process.

- **OAG needs more funds to use on litigation.** As described above, OAG has an inherent fiscal imbalance when it comes to defensive litigation. That is, we are expected to defend the District, the agencies, the employees, and occasionally the actions of this Council

– all with a litigation budget of under \$400,000. We routinely obligate this amount within the first quarter of each fiscal year, then make very difficult decisions about which cases need to be defended based not on the merits of the case, but on the availability of funds.

The need is particularly keen with the defense of legislation passed by the Council and challenged on a pre-enforcement basis. This is true of two recent Acts – the Terrorism Prevention in Hazardous Materials Transportation Act of 2005, and Title II of AccessRx which was passed in 2004. Indeed, OAG was forced to ask for additional funds from the FY 2005 reserve to help pay for these litigation costs.

- **OAG needs capital improvement funds.** OAG is the largest tenant in One Judiciary Square. It is also the only tenant whose space has not been improved since the building was put into service. The carpet is torn and stained, the walls are filthy and have holes, and the furniture is largely federal government surplus. The space is poorly designed and there is much wasted interior space. Many of the attorneys are embarrassed to host meetings or depositions because of the condition of the space. Ideally, the District's lawyers should have more suitable working conditions.

Conclusion

What I told the Committee last year remains true today: I am proud to serve with the men and women of the Office of the Attorney General and the agency counsel. They are among the most talented and hardest working employees in the District, demonstrating their commitment to public service on a daily basis. With their support, and the support of Mayor Williams and the Council, I am confident that we can continue to move OAG closer to achieving its full potential.

Thank you for allowing me to appear before you today. I am happy to answer any questions.